No. _____

87-1993

In The

Supreme Court Of The United States

Supreme Court, U.S.
FILED
MAY 19 1988
JOSEPH F. SPANIOL, JR.

LIBRARY
SUPREME COURT, U.S.
WASHINGTON, D.C. 20543

_____ TERM, 1988

ANTHONY H. ROBINSON,

Petitioner,

v.

VIRGINIA STATE BAR, ex rel
THIRD DISTRICT COMMITTEE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF VIRGINIA

Craig S. Cooley, Esquire
3000 Idlewood Avenue
Richmond, Virginia 23221
(804) 358-2328

C. David Whaley, Esquire
9 East Franklin Street
Richmond, Virginia 23219
(804) 643-0147

Counsel for Petitioner

LAWYERS PRINTING COMPANY 7th & Franklin Bldg. Richmond, Virginia 23219 (804) 648-3664

QUESTIONS PRESENTED

I. WHETHER THE DISMISSAL OF ROBINSON'S APPEAL WAS AN ACTION UNDER COLOR OF LAW OR AUTHORITY WHICH VIOLATED ROBINSON'S CONSTITUTIONAL RIGHT TO EQUAL PROTECTION OF THE LAWS?

II. WHETHER THE DISMISSAL OF ROBINSON'S APPEAL WAS AN ABUSE OF JUDICIAL DISCRETION IN VIOLATION OF LEGISLATIVE INTENT AND IN VIOLATION OF ROBINSON'S CONSTITUTIONAL RIGHT TO EQUAL PROTECTION OF THE LAWS?

III. WHETHER THE REFUSAL TO VACATE OR RECONSIDER THE DECISION TO DISMISS ROBINSON'S APPEAL WAS AN ABUSE OF DISCRETION CONTRARY TO FEDERAL PRECEDENTS?

INDEX

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION	1
QUESTIONS PRESENTED	2
STATUTE AND CONSTITUTIONAL PROVISION INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING WRIT	6
CONCLUSION	16
APPENDIX A	
ORDER OF SUPREME COURT OF VIRGINIA DISMISSING APPEAL ENTERED FEBRUARY 19, 1988	18
MOTION TO VACATE ORDER DISMISSING APPEAL AND MEMORANDUM IN SUPPORT THEREOF FILED MARCH 21, 1988	19
UPON A PETITION FOR REHEARING ORDER ENTERED APRIL 13, 1988	29
ORDER STAYING EXECUTION JUDGMENT ENTERED APRIL 13, 1988	31

NOTICE OF PETITION FOR
WRIT OF CERTIORARI FILED
MARCH 21, 1988 33

TABLE OF AUTHORITIES

PAGE

CASES:

Avery v. Count School Board, 192 Va. 329, 64 S.E. 2d 767 (1951) 9, 15

Blois v. Friday, 612 F. 2d 938 (5th Cir. 1980) . . . 11, 13, 15

Blue v. Seventh District Committee of the Virginia State Bar, 220 Va. 1056, 265 S.E. 2d 753 (1980) 7, 10

Hartscock v. Powell, 199 Va. 320, 99 S.E. 2d 581 (1957) 13

Hutto v. Waters, 552 F. Supp. 266 (E.D.Va. 1982) 7

NAACP v. Button, 371 U.S. 415, 83 S.Ct. 328, __ L. Ed. 2d ___ (1963). 15

Re Buffalo, 390 U.S., 88 S. Ct. 1222, 20 L. Ed. 2d 117 (1968) 15

Reiakis v. Loy, 490 F. 2d 1132 (4th Cir. 1974). . 10, 11, 13, 15

Theard v. United States, 354 U.S. 155, 77 S.Ct. 1274, __ L. Ed. 2d __ (1957) 15

OPINIONS BELOW

The opionion of the Supreme Court of Virginia is unreported and is printed in Appendix A hereto, infra, page 18. The judgment of the Supreme court of Virginia refusing to vacate its order dismissing Robinson's appeal is printed in Appendix A hereto, infra, page 25.

JURISDICTION

The judgment of the Supreme Court of Virginia (Appendix A, infra, page 16) was entered on February 19, 1988. A motion to vacate said order (treated as a petition for rehearing) was denied on April 13, 1988. (Appendix A, infra, page 25) The jurisdiction of the Supreme Court is invoked under Title 28, United States Code, Section 1257(3).

QUESTIONS PRESENTED

I. WHETHER THE DISMISSAL OF ROBINSON'S APPEAL WAS AN ACTION UNDER COLOR OF LAW OR AUTHORITY WHICH VIOLATED ROBINSON'S CONSTITUTIONAL RIGHT TO EQUAL PROTECTION OF THE LAWS?

II. WHETHER THE DISMISSAL OF ROBINSON'S APPEAL WAS AN ABUSE OF JUDICIAL DISCRETION IN VIOLATION OF LEGISLATIVE INTENT AND IN VIOLATION OF ROBINSON'S CONSTITUTIONAL RIGHT TO EQUAL PROTECTION OF THE LAWS?

III. WHETHER THE REFUSAL TO VACATE OR RECONSIDER THE DECISION TO DISMISS ROBINSON'S APPEAL WAS AN ABUSE OF DISCRETION CONTRARY TO FEDERAL PRECEDENTS?

STATUTE AND CONSTITUTIONAL PROVISION INVOLVED

> (5) Appeal. The person or persons making the complaint or the defendant, may, as of right, appeal from

> the judgment of the court to the Supreme Court, by petition based upon a true transcript of the record, which shall be made up and certified as in actions at law. in all such cases where a defendant's license to practice law has been revoked by the judgment of the court, his privilege to practice law shall be suspended pending appeal. [emphasis added]

Code of Virginia (1950), as amended, Section 54-74, subparagraph 5. Printed in Appendix B hereto, infra, page ___.

> All persons born or naturalized in the United States, and subject of the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any persons within its jurisdiction the equal protection of the laws. [emphasis added].

United States Constitution, Fourteenth Amendment, Section 1.

STATEMENT OF CASE

Robinson is aggreieved by the final

order of the Supreme Court of Virginia ("Virginia Supreme Court") dismissing his appeal. Appendix A, infra. page ___ Robinson's appeal was dismissed because a "written" notice of appeal was not timely filed by counsel representing Robinson. Id.; Rule 9, Rules of the Supreme Court of Virginia.

On September 28, 1987, a hearing was conducted, in the Richmond Circuit Court, before a three-judge panel which heard charges of misconduct against Robinson. Said charges of misconduct alleged that Robinson violated Diciplinary Rules 5-105 (A), (B) and (C) of the Revised Virginia Code of Professional Responsiblity. The three-judge panel, after hearing evidence, ore tenus, found Robinson guilty of misconduct constituting a violation of the aforementioned disciplinary rules and, upon the recommendation of the complainant (appellee herein; hereinafter "the Bar"),

ordered, inter alia, that Robinson's license to practice law within the Commonwealth of Virginia be suspended for a period of twelve (12) months, effective Dec. 1, 1987. At all times during the aforementioned proceedings Robinson was represented by retained counsel.

After the aforementioned proceedings were concluded, Robinson informed all concerned of his intentions to exercise his statutory right of appeal. See Section 54-74(5), Code of Virginia ("Va. Code"), 1950, as amended. Specifically, Robinson confered with his retained counsel and directed him to pursue such appeal on Robinson's behalf.

Counsel for Robinson noted Robinson's intention to appeal the order of October 21, 1987 to the Virginia Supreme Court, obtained an order suspending enforcement of said order pending proceedings on appeal to the Virginia Supreme Court, and timely

filed a petition for appeal with the Virginia Supreme Court. Unfortunately, as aforestated, by order entered February 19, 1988, the Virginia Supreme Court dismissed Robinson's appeal. Appendix A, infra, page ___.

REASONS FOR GRANTING WRIT

I. Whether The Dismissal Of Robinson's Appeal Was An Action Under Color Of Law Or Authority Which Violated Robinson's Constitutional Right To Equal Protection Of The Laws?

The Virginia Supreme Court, allegedly acting pursuant to Rule 5:9 of the Rules of the Supreme Court of Virginia, dismissed Robinson's appeal, as a matter of right, contrary to the intentions of the Virginia legislature.

> . . . the defendant, may, as of right, appeal from the judgment of the court to the Supreme Court, by petition based upon a true transcript of the record, * * * * * . . . [emphasis added]

Code of Virginia, 1950, Section 54-74(5). As the Virginia Supreme Court has recognized, the Virginia legislature intended for Robinson's case to be reviewed on appeal, de novo. Blue v. Seventh District Committee of the Virginia State Bar, 220 Va. 1056, 265 S.E. 2d 753 (1980).

> Claims of entitlement, and hence property interests, arise from many sources. State statutes, [such as Code of Virginia, 1950, Section 54-74 (5)] . . . which secure certain benefits, may be sufficient to support claims of entitlement to those benefits. [emphasis added; citatious omitted]

Hutto v. Waters, 552 F. Supp. 266, 269 (E. D. Va. 1982). The Virginia legislature conferred upon Robinson an appeal from the judgment of the three-judge panel, "as of right". Robinson (the defendant; petitioner herein), aggreieved by the judgment of the three-judge panel, was entitled to appeal to the Virginia Supreme Court from said judgment "as of right". Therefore, the Virginia Supreme Court, acting under

color of law or authority (Rule 5:9 of the Rules of the Supreme Court of Virginia), arbitrarily dismissed Robinson's appeal in violation of Robinson's statutory right. Robinson has been denied the equal protection of the laws, specifically as provided for under the provisions of Code of Virginia (1950), Section 54-74(5).

II. Whether The Dismissal Of Robinson's Appeal Was An Abuse Of Judicial Discretion In Violation Of Legislative Intent And In Violation Of Robinson's Constitutional Rignt To Equal Protection Of The Laws?

The Supreme Court of Virginia has clearly stated the purpose of Rule 5:9 of the Rules of the Supreme Court of Virginia.

> Purpose of the specific time limit is not to penalize the appellant but to protect the appellee. If the required papers are not filed within the time limit, the appellee is entitled to assume that the litigation is ended, and to act on that assumption. Litigation is a serious and harassing matter, and the right to know when it

> is ended is a valuable right. [emphasis added]

Avery v. County School Board, 192 Va. 329, 64 S.E. 2d 767 (1951). In light of the clear wording of Rule 5:9(a), Rules of the Supreme Court of Virginia:

> No appeal shall be allowed unless, within 30 days after entry of final judgment or other appealable order or decree, counsel[1] for the appellant files with the clerk of the trial court a notice of appeal and at the same time mails or delivers a copy of such notice to all opposing counsel. [emphasis added]

the Virginia Supreme Court apparently has forgotten or elected to ignore the Avery decision. Robinson, at all times, has been "represented by an attorney". Robinson's actions unquestionably evidenced his intentions to exercise his statutory right to have the Virginia Supreme Court review

---

[1] Rule 5:1(5) Rules of the Supreme Court of Virginia, defines "counsel for the appellant" as "one of the attorneys representing each appellant represented by an attorney and each appellant not represented by an attorney".

the evidence, de novo, presented against him and make an independent judgment. Blue v. Seventh District Committee of the Virginia State Bar, supra. It was counsel for Robinson, not Robinson, who failed to timely file the "written" notice of appeal. Allegedly exercising sound judicial discretion, the Virginia Supreme Court relied upon Rule 5:9(a) as the basis for dismissing Robinson's appeal. In light of Reizakis v. Loy, 490 F. 2d 1132, 1135 (4th Cir. 1974)

> . . . dismissal "must be tempered by a careful exercise of judicial discretion". * * * Rightfully, courts are reluctant to punish client for the behavior of his lawyer. [quotation in original; citation omitted]

the Virginia Supreme Court did not exercise sound judicial discretion. Judicial discretion was exercised abusively in violation of Robinson's constitutional right to equal protection of the laws.

III. Whether The Refusal To Vacate Or Reconsider The Decision To Dismiss Robinson's Appeal Was An Abuse Of Judicial Discretion Contrary To Federal Precedents?

Consistently, the federal courts have expressed that a client should not be punishised (penalized) for the negligence of his attorney. Blois v. Friday, 612 F. 2d 938 (5th Cir. 1980); Reizakis v. Loy, 409 F. 2d 1132 (4th Cir. 1974). The Virginia Supreme Court is, unquestionably, aware that, at all times, Robinson was represented by counsel. As set forth to the Virginia Supreme Court by Robinson's new counsel, the failure to timely file the "written" notice of appeal was due to the negligence of counsel formerly representing Robinson. The inaction of Robinson's former counsel should not be utilized to punish (penalize) Robinson. Blois v. Friday, supra; Reizakis v. Loy, supra.

Contrary to federal precedents,

Robinson is suffering punishment (a penalty) because of the inaction of his former counsel. This punishment is being inflicted upon Robinson by an abuse of judicial discretion. That is, the Virginia Supreme Court is aware that Robinson had the right to expect that his attorney would competently and diligently represent his interests; that his attorney knew or would learn what was required to effectively present an appeal to the Virginia Supreme Court on Robinson's behalf; that his attorney would do what was necessary to cause Robinson's appeal to be properly presented (including the requisite giving of notice to all parties in interest) to the Virginia Supreme Court. The Virginia Supreme Court knew of the federal courts view that

> . . . dismissal "must be tempered by a careful exercise of judicial discretion". * * * Rightfully, courts are reluctant to punish a client for behavior of his lawyer. [quotation in

original; citations omitted; emphasis added]

Reizakis v. Loy, supra; Blois v. Friday, supra. Careful judicial discretion was not exercised by the Virginia Supreme Court. The Virginia Supreme Court expressed no reluctance in penalizing Robinson for his attorney's inactions. Had the Virginia Supreme Court been reluctant in inflicting punishment (by reviewing Robinson's motion to vacate order (treated as a motion for rehearing) upon its merits) it would have determined that "good cause"[2] existed and that the ends of justice would be attained by granting Robinson an extention of time[3]. Dismissal

---

[2]See Hartscock v. Powell, 199 Va. 320, 99 S.E. 2d 581 (1957). An extention of 30 days was granted for the filing of the notice of appeal upon a showing of good cause. The court took jurisdiction to decide the case on its merits.

[3]The "written" notice of appeal was filed by Robinson's counsel approximately 4 days late. However, the petition for appeal was timely filed.

of Robinson's appeal and the denial of motion to vacate order (treated as a motion to rehear) were clear abuses of judicial discretion, contrary to federal precedents, requiring this Court to exercise its certiorari jurisdiction.

State court attorney diciplinary actions have previously been reviewed by this Court where questions arose concerning violations of constitutional rights.

> For a State may not, under the guise prohibiting professional misconduct, ignore constitutional rights. [citations omitted] * * * "In the domain of these indispensable liberties, whether of speech, press, or association, [or due process or equal protection,] the decisions of this Court recognize that abridgment of such rights, even though unintended, may inevitably follow from varied forms of governmental action". * * * "[w]here there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling". * * * " * * * <u>regulatory measures</u> * * * no matter how sophisticated, cannot be employed in purpose or in effect to stifle, penalize, or curb the exercise of First Amendment rights [nor the prohibitions or protections mandated under

the Fourteenth Amendment]". [bracketed phrases added] NAACP v. Button, 371 U.S. 415, 439, 83 S. Ct. 328, 341 (1963). See also Re Buffalo, 390 U.S. 544, 88 S. Ct. 1222, 20 L. Ed. 2d 117 (1968); Theard v. United States, 354 U.S. 155, 77 S.Ct. 1274 __ L. Ed. __ (1957). In Avery v. County School Board, supra, the Virginia Supreme Court clearly stated that the purpose of Rule 5:9, Rules of Supreme Court of Virginia, is regulatory, to protect the appellee and "not to penalize the appellant". It is, therefore, inconceivable why the Virginia Supreme Court, contrary to federal precedents (Blois v. Friday, supra; Reizakis v. Loy, supra) and contrary to Robinson's constitutional right to equal protection of the laws, has elected to penalized Robinson for the inadvertence of his attorney. The Virginia Supreme Court, unquestionably, abused its judical discretion in violation of

Robinson's constitutional rights.

CONCLUSION

The jurisdiction (28 U. S. C. Section 1257(3)) of this Court is properly invoked. This petition presents important and novel substantial federal questions requiring plenary consideration, with briefs on the merits and oral argument, for their resolution, to wit:

> Whether the Virginia Supreme Court employed a regulatory measure (Rule 5:9, Rules of Supreme Court of Virginia) for the purpose of, or with the effect of, stifling or penalizing Robinson in violation of the prohibitions of or in violation of the Rights protected by the Fourteenth Amendment?

The undeniable answer is in the affirmative. The writ of certiorari prayed for should issue forth.

Dated 19th of May, 1988.

ANTHONY H. ROBINSON

By _____
Counsel

RECORD NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

_____

_____ TERM, 1988

_____

ANTHONY H. ROBINSON, Petitioner,

v.

VIRGINIA STATE BAR, ex rel
Third District Committee, Respondent.

_____

PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF VIRGINIA

_____

Appendix A

VIRGINIA:

IN THE SUPREME COURT OF VIRGINIA HELD AT THE SUPREME COURT BUILDING IN THE CITY OF RICHMOND ON WEDNESDAY THE 19th DAY OF FEBRUARY, 1988.

ANTHONY H. ROBINSON, Appellant,

against Record No. 880078
Circuit Court No. 87-2540

VIRGINIA STATE BAR, ex rel.
Third district Committee, Appellee.

Finding that the appeal was not perfected in the manner provided by law, the Court dismisses the petition for appeal filed the above-styled case. Rule 5:9.

A Copy,

Teste:

/s/ David B. Beech

Clerk

IN THE
SUPREME COURT OF VIRGINIA
AT RICHMOND

ANTHONY H. ROBINSON,

Appellant,

v. 880078

VIRGINIA STATE BAR, ex rel,
Third District Committee,

Appellee.

MOTION TO VACATE
ORDER DISMISSING APPEAL
AND MEMORANDUM IN
SUPPORT THEREOF

Motion To Vacate
Order Dismissing Appeal

The appellant, by counsel, moves this Court to vacate its order of February 19, 1988 and to enter an order setting this case upon the docket for oral argument in accord with the statuatory right of appeal guaranteed to appellant under the provisions of Section 54-74(5) of the Code of

Virginia ("the Code"), 1950, as amended, or in the alternative, an order granting appellant a rehearing. The grounds for this motion are: that considering the record, the statutes and the precedents, the decision of this Court to dismiss appellants's appeal is plainly wrong. In support hereof appellant states:

1. That Section 54-74(5) of the code guarantees appellant an appeal to this Court as a matter of right.

2. That contrary to this Court's misunderstanding, appellant, at all times during the pendency of the investigation by the Bar and during the pendency of the proceedings below, by his actions, made it unquestionably clear that he would exercise his statutory right to appeal any adverse decision to this Court. Thus, the fact that the "written" notice of appeal may not have been filed within the required 30 day period is of no consequence as

appellant made known his intention to exercise his statutory right of appeal even prior to the commencement of the proceedings before the trial court. See Lackey v. Lackey, 222 Va. 49, 278 S.E. 2d 811 (1981).

3. That the "written" notice of appeal was not untimely filed as appellant and his former counsel verily believed that the trial court would timely, in accord with the provision of Rule 1:1 of the Rules of the Supreme Court of Virginia ("the Rules"), exercise its authority to modify the order entered October 21, 1987.

4. That the "written" notice of appeal was not untimely filed as it was filed on November 25, 1987, approximately two (2) months prior to the filing of the trial court's "final order" modifying the order of October 21, 1987.

5. That, if this Court finds that the "written" notice of appeal was untime-

ly filed, the untimely filing of said "written" notice was the error of appellant's former counsel and such error must not be visited upon appellant. Blois v. Friday, 612 F. 2d 938 (5th Cir. 1980); Reizakis v Loy, 490 F. 2d 1132 (4th Cir. 1974).

WHEREFORE, appellant prays that the February 19, 1988 order of this Court dismissing his appeal be vacated; that this cause be placed upon the docket for oral argument, or, in the alternative, that he be granted a rehearing.

Memorandum

This matter is before this Court pursuant to Section 54-74(5) of the Code which specifically guarnatees appellant an appeal to this Court "as of right". Rutledge v. Tenth District Committee of Virginia State Bar, 214 Va. 312, 200 S.E.

2d 573 (1973) DeFoe v. Friedlander, 211 Va. 121, 176 S.E. 2d 448 (1970); Maddy v. First District Committee of the Virginia State Bar, 205 Va. 652, 139 S.E. 2d 56 (1964), rehearing denied. By order of this Court entered February 19, 1988 this appeal was inadvertently dismissed.

Section 54-74(5) specifically guarantees Robinson "as of right" [an] appeal from the judgment of the court [below] to [this Court]". Rutledge v. Tenth District Committee of Virginia State Bar, supra; DeFoe v. Friedland, supra; Maddy v. First District committee of the Virginia State Bar, supra. To deny Robinson his statutory right of appeal, upon the pretext that his intent to exercise said right was untimely noted, is unquestionably tantamount to violating Robinson's constitutional rights as guaranteed under the proscriptive mandates of the Fourteenth Amendment to the United States constitu-

tion

> * * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of . . . liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Specifically, to deny Robinson the right of appeal statutorily guaranteed to him is to deny Robinson his constitutional right to "the equal protection of laws".

First of all, as similarly noticed by this Court in Lackey v. Lackey, supra, Robinson's actions unquestionably evidenced his intent to exercise his right of appeal to this Court from any adverse decision rendered by the trial court. See affidavit attached as exhibit "A". Robinson timely noted his appeal.

Further, assuming arguendo, the "written" notice of appeal was untimely filed, it was untimely filed by Robinson's former counsel. The untimely filing was

the error of Robinson's former counsel. In Blois v. Friday, supra, a default summary judgment was entered against the plaintiff because plaintiff's attorney, due to inadvertence, failed to answer the defendant's motion for summary judgment. Considering the facts, the Court ruled

> The plaintiff should not be punished for his attorney's mistake absent a clear record of delay, willful contempt or contumacious conduct. [citations omitted]

612 F. 2d at 940. This Court must further bear in mind the opinion expressed in Reizakis v. Loy, supra,

> . . . dismissal "must be tempered by a careful exercise of judicial discretion". * * * Rightfully, courts are reluctant to punish a client for the behavior of his lawyer. [citation omitted]

409 F. 2d at 1135. Though Blois and Reizakis were not addressing dismissed appeals, both cases addressed the issue of concern in the instant case: A CLIENT MUST NOT BE PUNISHED FOR ACTIONS OR INAC-

TIONS OF HIS ATTORNEY.

However, if Robinson's former counsel untimely filed the notice of appeal, this error was apparently caused by the trial court's failure to act in a timely manner. That is, the motion for the trial court to modify its order of October 21, 1987 was made within the twenty-one (21) day period within which the trial court could have entered its order granting Robinson a stay of the execution of the order suspending his license effective December 1, 1987. As evidenced by the record, the trial court (obviously believing it still had jurisdiction) entered its order staying (modifying) its order of October 21, 1987 on January 20, 1988. Thus it would appear that Robinson's former counsel timely filed the "written" notice of appeal almost two months before the final order was entered by the trial court.

Nevertheless, the fact remains, that

Robinson is entitled to a statutory right of appeal to this Court from the judgment of the trial court. Section 54-74(5) of the code; Rutledge v. Tenth District Committee of Virginia State Bar, supra; Maddy v. First District Committee of the Virginia State Bar, supra. This Court must, therefore, vacate its order of February 19, 1988.

ANTHONY H. ROBINSON

By /s/ Bradford F. Johnson

Bradford F. Johnson, Esquire
BRADFORD FLEMING JOHNSON, LTD.
321 North 23rd Street
P. O. Box 8047
Richmond, Virginia 23223
(804) 643-1178

Craig S. Cooley, Esquire
3000 Idlewood Avenue
Richmond, Virginia 23220
(804) 358-2328

CERTIFICATE

A true copy of the foregoing MOTION

TO VACATE ORDER DISMISSING APPEAL AND MEMORADUM was mailed, postage prepaid,/ HAND DELIVERED to Harry M. Hirsch, Esquire, Assistant Bar Counsel 405 Strawberry Street, Richmond, Virginia 23220, on this 18th day of March, 1988.

/s/ Bradford F. Johnson

IN ACCORD WITH THE PROVISIONS OF RULE 5:4 (a) OF THE SUPREME COURT OF VIRGINIA, APPELLANT REQUEST THAT HE BE GRANTED LEAVE TO ORALLY ARGUE THIS MOTION BEFORE. JUSTICE OR A PANEL OF JUSTICES. IMMEDIATE RELIEF IS NECESSARY TO ATTAIN THE ENDS OF JUSTICE AND FOR THE PURPOSE OF PREVENTING APPELLANT FROM ILLEGAL AND UNJUSTIFIED IRREPARABLE HARM.

VIRGINIA:

IN THE SUPREME COURT OF VIRGINIA HELD AT THE SUPREME COURT BUILDING IN THE CITY OF RICHMOND ON WEDNESDAY THE 13th DAY OF APRIL, 1988.

Anthony H. Robinson, Appellant,

against Record No. 880078
Circuit Court No. 87-2540

Virginia State Bar, ex rel.
Third District Committee, Appellee.

Upon A Petition For Rehearing

On consideration of the motion of the appellant to vacate order dismissing appeal, which is treated as a petition to set aside the judgment rendered herein on the 19th day of February, 1988 and grant a rehearing thereof, memorandum in support thereof, the appellee's reply and memorandum in support thereof, the prayer of the

said petition is denied.

A Copy,

Teste:

/s/ David B. Beech

Clerk

VIRGINIA:

IN THE SUPREME COURT OF VIRGINIA HELD AT THE SUPREME COURT BUILDING IN THE CITY OF RICHMOND ON WEDNESDAY THE 13th DAY OF APRIL, 1988.

Anthony H. Robinson, Appellant,

against Record No. 880078
Circuit Court No. 87-2540

Virginia State Bar, ex rel.
Third District Committee, Appellee.

ORDER STAYING EXECUTION OF JUDGMENT

Upon consideration of the petition of the appellant, by counsel, for a writ of supersedeas, it is ordered that the execution and enforcement of the judgment rendered herein February 19, 1988 be and the same hereby is stayed, to and including the 19th day of May, 1988, on the expiration of which time the same may be enforced, unless the case has been before that time docketed in the Supreme Court of

the United States, in which event enforcement thereof shall be stayed until the final determination of the case by that Court.

A Copy,

Teste:

/s/ David B. Beech

Clerk

IN THE SUPREME CORUT OF VIRGINIA
AT RICHMOND

RECORD NO. 880078

ANTHONY H. ROBINSON, Appellant,

v.

VIRGINIA STATE BAR, el rel
Third District Committee, Appellee.

NOTICE OF PETITION FOR
WRIT OF CERTIORARI

Notice Is Hereby Served, that the Appellant herein is aggrieved by this Court's final decision, as entered April 13, 1988, denying his petition for rehearing/reconsideration as presented by way of a motion to vacate final order. Therefore, Appellant shall file in the Supreme Court of the United States a petition for writ of certiorari pursuant to Title 28, United States Code, Section 1257, subparagraph 3. A writ of

supersedeas is re-

quested.

ANTHONY H. ROBINSON

By /s/ Craig S. Cooley

Craig S. Cooley, Esquire
3000 Idlewood Avenue
Richmond, Virginia 23221
(804) 358-2328

C. David Whaley, Esquire
9 East Franklin Street
Richmond, Virginia 23220
(804) 643-0147

IN THE
SUPREME COURT OF VIRGINIA

ANTHONY H. ROBINSON,

Appellant,

v. RECORD NO. 880078

VIRGINIA STATE Bar, ex rel,
Third District Committee,

Appellee.

NOTICE OF PETITION FOR WRIT
OF CERTIORARI

Notice is hereby given that, Anthony H. Robinson, the appellant above named, hereby intends to make petition to the Supreme Court of the United States for petition for writ of certiorari from the final order of this Court dismissing his appeal, entered in this action of February 19, 1988.

Petition for writ of certiorari shall be sought pursuant to Title 28, United States Code, Section 1257, subparagraph 3.

Dated _____.

ANTHONY H. ROBINSON

By /s/ Bradford F. Johnson

Bradford F. Johnson, Esquire
BRADFORD FLEMING JOHNSON, LTD.
321 North 23rd Street
P. O. Box 8047
Richmond, Virginia

Craig S. Cooley, Esquire
3000 Idlewood Avenue
Richmond, Virginia 23220

RECORD NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

_____

_____ TERM, 1988

_____

ANTHONY H. ROBINSON, Petitioner,

v.

VIRGINIA STATE BAR, ex rel
Third District Committee, Respondent.

_____

PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF VIRGINIA

_____

Appendix B

PUBLISHER'S NOTE

THE FOLLOWING PAGE IS UNAVAILABLE FOR FILMING

38

Craig S. Cooley, Esquire
3000 Idlewood Avenue
Richmond, Virginia 23221
(804) 358-2328

C. David Whaley, Esquire
9 East Franklin Street
Richmond, Virginia 23219
(804) 643-0147

CERTIFICATE

A true copy of the foregoing PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA was mailed, postage prepaid, to Martha Parrish, Equire, Assistant Attorney General for the Commonwealth of Virginia, 101 North 8th Street, Richmond, Virginia, on this 19th day of May, 1988